

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

JOSEPH S. VON KAENEL,)	
)	
Plaintiff,)	
)	
v.)	Case No. 4:16-cv-01414-HEA
)	
ARMSTRONG TEASDALE LLP,)	
)	
Defendant.)	

DEFENDANT’S MOTION TO DISMISS

COMES NOW Defendant Armstrong Teasdale LLP (“Defendant” or “Armstrong Teasdale”), by and through its counsel, and pursuant to Federal Rule of Civil Procedure 12(b)(6), hereby moves this Court to dismiss the Complaint of Plaintiff Joseph S. von Kaenel (“Plaintiff” or “von Kaenel”) for failure to state a claim upon which relief may be granted. In support of its Motion, Defendant states as follows:

1. Plaintiff alleges he was born on November 27, 1944, and worked as an attorney with Defendant from June 1, 1972 through December 31, 2014. (Complaint, ¶¶ 5-6.) At the time of his separation, Plaintiff was an equity partner of Defendant. (*Id.* ¶ 6.)
2. According to Plaintiff, Defendant maintains a mandatory retirement policy “which requires that equity partners leave the firm at the end of the calendar year in which the equity partner turns seventy (70) years of age.”¹ (*Id.* ¶ 11.)

¹ For the purpose of this Motion to Dismiss only, Defendant does not dispute, and treats as true, the factual allegations in Plaintiff’s Complaint.

3. In March 2014, Defendant informed Plaintiff that he “would not be allowed to remain employed with Defendant past December 31, 2014, because he would be turning seventy (70) years old that year.” (*Id.* ¶ 10.)

4. Plaintiff filed a charge of discrimination with the EEOC on December 11, 2014 challenging as discriminatory Defendant’s refusal to allow him to remain with the law firm beyond the end of the calendar year in which he turned age 70. (*Id.* ¶ 20.)

5. As a condition to maintaining a lawsuit under the Age Discrimination in Employment Act (the “ADEA”), an individual must file a charge of age discrimination with the EEOC within 180 days after the alleged unlawful practice occurred. 29 U.S.C. § 626(d)(1)(A). Where, however, “an alleged unlawful practice occur[s] in a State which has a law prohibiting discrimination in employment because of age *and* establishing or authorizing a State authority to grant or seek relief from such discriminatory practice,” then the 180-day deadline is extended to 300 days. 29 U.S.C. §§ 626(d)(1)(B), 633(b) (emphasis added).

6. The 180-day deadline applies here. While the ADEA prohibits discrimination against individuals aged forty and older (with no upper limitation on age), the Missouri Human Rights Act (“MHRA”) expressly limits protection against alleged age discrimination to individuals who are “forty or more years **but less than seventy years**” of age. *Compare* 29 U.S.C. § 631 *with* Mo. Rev. Stat. § 213.010(1). As a result, an individual age seventy or older cannot maintain an age claim (and has no right to relief) under the MHRA, and the Missouri Commission on Human Rights (“MCHR”) would lack subject matter jurisdiction over the charge of age discrimination.

7. Plaintiff has alleged, and continues to allege, that he was discriminated against due to his age, 70, and, thus, the MCHR lacked subject matter jurisdiction over his charge.

8. Accordingly, and under established law, Plaintiff had 180 days from being informed in March of 2014 (when he alleged he was informed that he would be separated from Defendant at the end of the year) in which to file his charge with the EEOC. Because Plaintiff failed to do so, his Complaint must be dismissed, with prejudice.

9. Defendant files herewith its Memorandum in Support of this Motion to Dismiss, which is incorporated herein by reference.

WHEREFORE, Defendant Armstrong Teasdale LLP respectfully moves this Court to dismiss Plaintiff's Complaint, with prejudice, and for such other and further relief as this Court deems just and proper.

Respectfully submitted,

Dated: November 14, 2016

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served via this Court's ECF system to the following parties this 14th day of November, 2016

/s/ Neal F. Perryman